IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4178 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT PANCHAYAT & 1 - Petitioner(s)

Versus

KHIMABHAI GORABHAI - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner No(s).: 1,2.

MR TR MISHRA for Respondent No(s).: 1.
MR DS CHAUHAN for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/08/2005

ORAL JUDGMENT

1.0 The petitioner Panchayat has challenged the award dated 09.12.1996 passed by the Labour Court, Jamnagar, in

Reference LCJ No. 1145 of 1990 (Old Reference LCJ No. 913 of 1989), whereby the petitioner was directed to reinstate the respondent to the post of Rojamdar with 30 % back wages.

2.0 The brief facts of the case are that the respondent herein was employed as a daily wager by petitioner no.2 herein. On 14.07.1988 the services of the respondent were terminated. Against the said order, the respondent raised a dispute by way of a reference before the Labour Court, Jamnagar. The Labour Court by impugned award allowed the said reference with the aforesaid directions. Hence, this petition.

3.0 Mr. P V Hathi learned advocate for the petitioners has contended that since the respondent was employed as a daily wager only and was not appointed on any Post, the termination of his services cannot be termed as “retrenchment” within the meaning of Section 2(S) of the I.D. Act, and therefore, the Labour Court had no jurisdiction to invoke the provisions of Section 25F of the said Act.

3.1 Mr. Hathi has further submitted that the Labour

Court could not have granted any back wages to the respondent since the respondent had not proved that he was in continuous employment of the petitioner Panchayat. He has further submitted that the respondent himself had admitted the fact that he had never approached the petitioner Panchayat nor has given any demand notice, as per the findings of the Court on page 41 of the award, and therefore, the impugned award is illegal and perverse and deserves to be quashed and set aside.

4.0 Mr. Mishra learned advocate for the respondent has supported the award of the Labour Court and has submitted that the Labour Court was completely justified in passing the impugned award. He has, therefore, submitted that no interference is required by this Court in this petition.

5.0 On 17.11.1997, while issuing Notice in the matter, this Court had stayed the operation of the impugned award. The said relief was confirmed on 22.12.1997 while admitting the matter. However, on 27.07.2004 an application being Civil Application No. 5988 of 2004 was moved by the respondent which came to be disposed of by order dated 20.09.2004. The said order reads as under;

"1. Mr.J S Yadav learned advocate appearing for the applicant moves a draft amendment. The same is allowed.

2. Rule. Mr. PV Hathi learned advocate appears and waives service of Rule on behalf of the opponents.

3. This Civil Application is affirmed on 30th July, 2004 at Jamnagar and if filed on 4th August, 2004 before this Court, seeking the relief to the effect that,

"The Hon'ble Court be pleased to direct the opponents herein – original petitioners, their officers and agents to immediately reinstate the applicant – original respondent in service and the applicant be permitted to join and discharge his duties without any disturbance from the opponents herein."

It is also prayed that,

"The Hon'ble Court be pleased to **vacate the interim relief granted by this Hon'ble Court vide order dated 22.12.1997 without consequential and incidental orders.**" (emphasis supplied)

By the amendment, it is prayed that,

"Be pleased to direct the respondents, their officers, agents to pay to the applicant all his legitimate dues as per Section 17-B of the I.D. Act will all consequential and incidental reliefs."

4. Least is required to be said about this Civil Application and the vigilance with which the applicant workman has acted for his rights. The petition was filed by the District Panchayat, Jamnagar on 16.06.1997. The Court issued Notice on 17.11.1997, returnable on 08.12.1997. As nobody appeared on 08.12.1997, the matter was adjourned to 22.12.1997. On 22.12.1997, the Court passed the following order;

"Rule. Interim relief granted by this Court made absolute till decision of this Spe. C.A."

> 5. The learned advocate for the respondent workman filed his appearance in the year 1998 and then, for the reasons best known to the respondent workman and the learned advocate appearing for the respondent workman, no move was made till the filing of the present Civil Application. If the respondent workman could tolerate the order of interim relief for long seven years, there is no reason for this Court to vacate that interim relief at this stage. The only order which this Court deems fit to pass in the matter is to fix final hearing of the matter. The Office is directed to list this matter for final hearing on 19.01.2005. With this direction, the Civil Application is disposed of. Rule is discharged with no order as to costs."

6.0 I have heard learned counsel for the parties and perused the documents placed on record. The Labour Court while passing the impugned award has given the benefit of doubt to the respondent. It has given cogent reasons while granting reinstatement to the respondent to the post of Rojamdar. I am in complete agreement with the reasonings given by the Labour Court while granting reinstatement to the respondent.

6.1 However, so far as the reasonings given by the Labour Court while granting 30 % back wages are concerned, I am of the view that the respondent cannot be said to be entitled for the same in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J.,

pg.176, wherein it has been held that a workman cannot have automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005(5) S.C.C. pg.591], it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting 30 % back wages to the respondent is required to be quashed and set aside.

7.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court qua granting the respondent reinstatement to the post of Rojamdar is confirmed; and, the award qua granting 30% back wages is quashed and set aside. However, it is clarified that while confirming the order of reinstatement, the respondent shall be given the benefit of continuity of service for the purpose of seniority in the daily wagers' list and shall also be paid the average salary of 20 days from 27.07.2004 onwards. With the above observations, the petition stands disposed of. Rule is

made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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